

EXHIBIT D

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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 IN RE:

4 VIVENDI UNIVERSAL, S.A. New York, New York
5 SECURITIES LITIGATION 02 Civ. 05571 (RJH)

6 -----x

7 July 20, 2009
8 10:45 a.m.

9 Before:

10 HON. RICHARD J. HOLWELL,

11 District Judge

12 APPEARANCES

13 ABBEY GARDY RODD & ABRAMS, LLP
13 Attorneys for Class Plaintiffs

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1 MR. QUINN: Your Honor, from the defendants'
2 standpoint, we believe that there ought to be one trial on
3 liability, individual damage trial regard to the individual
4 plaintiffs were there to be a verdict.

5 What we want to avoid is essentially the idea that we
6 have three or four trials, and that seems to be what at least
7 may be contemplated by the class plaintiffs or in part by the
8 individual plaintiffs.

9 The reality is that we believe that in fairness to
10 Vivendi that there ought to be one trial on liability, because
11 if we win that trial, then all of the claims of the individual
12 plaintiffs and the class plaintiffs go away.

13 What part of this seems to assume is that we may end
14 up losing the trial and we would have to have additional trial.
15 We believe we will win on liability and, therefore, we believe
16 we all the to have one trial on liability.

17 If there is ever going to be a damage trial, so be it,
18 and if there is going to be another trial by Liberty Media, so
19 be it. But the fact is that these claims are identical. They
20 are not simply what Rule 42 talks about, which is common
21 questions of law and fact, they are identical questions of law
22 and fact.

23 The idea that we would have to have separate trials,
24 have people come back and testify on several different times,
25 have to win over and over again, it's unfair, it is judicially

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1 uneconomic and, frankly, your Honor, it doesn't make any sense.

2 Yes, there are issues with regard to standing,
3 although I believe that many of those issues will get resolved.
4 We will probably have some -- there are some that we would
5 still contest, but probably the vast majority of them we are
6 not going to contest so that issue is largely going to go away.

7 I will be perfectly happy to argue the fraud on the
8 market issue now or later, but we believe that we should be
9 entitled to raise those issues. We think, as I have said, we
10 said in our papers --

11 THE COURT: Of course, that brings to the fore the
12 manageability issue. If you are correct that Vivendi has
13 either the right or the obligation to put on evidence of
14 reliance, and if that is going to entail calling each of the
15 individual plaintiffs -- how many individual plaintiffs are
16 there that we are talking about?

17 MR. QUINN: I think there are 85. I believe they are
18 probably in groups in terms of who would actually testify.

19 THE COURT: If you are talking about calling 85
20 witnesses, which may well be in your rights on issues of
21 reliance, whether you have the burden or not, that brings up
22 different manageability considerations.

23 MR. QUINN: I agree it does bring up manageability
24 issues, there is no question about that. But you got to weigh
25 those manageability issues whether or not we should have

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1 several, two, three different trials over a period of time to
2 different juries. It would go on ad in finitim. My friend
3 here, Paul Saunders, at some time wants to retire.

4 THE COURT: Never.

5 MR. QUINN: We really believe, there is no doubt as
6 Mr. Abby says, it's true, it is a very complex case, there is
7 no question about it, but the core of the case is the same with
8 regard to the individual plaintiffs and the class plaintiffs,
9 and under those circumstances it really is, particularly given
10 the fact that we have prepared our case now, getting closer and
11 closer to trial, to try it on a consolidated basis, and now to
12 have to pull that apart is going to cause, I think, prejudice
13 to the Vivendi side, to the defendant, but more importantly
14 ultimately it makes no judicial economic sense to have multiple
15 trials.

16 THE COURT: It is hard for me to believe that you
17 would have a jury that would still focus and remember all of
18 the issues that they have to decide if they had sat here for an
19 extra month, say, to listen to 85 individual plaintiffs testify
20 about reliance.

21 MR. QUINN: Your Honor, that may be the case or may
22 not be the case. This is going to be a long trial no matter
23 what. It is going to probably take a couple of months.
24 Whether it adds on -- I mean, the plaintiff said, the
25 individual plaintiffs said in their pretrial order that they

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